

ORIGINAL



BEFORE THE ARIZONA CORPORATION COMMISSION

Arizona Corporation Commission

COMMISSIONERS

DOCKETED

MIKE GLEASON, Chairman  
WILLIAM A. MUNDELL  
J EFF HATCH-MILLER  
KRISTIN K. MAYES  
GARY PIERCE

SEP -7 2007

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IN THE MATTER OF THE APPLICATION OF  
DIECA COMMUNICATIONS DBA COVAD  
COMMUNICATIONS COMPANY,  
ESCHELON TELECOM OF ARIZONA, INC.,  
MCLEODUSA TELECOMMUNICATIONS  
SERVICES, INC., MOUNTAIN  
TELECOMMUNICATIONS, INC., XO  
COMMUNICATIONS SERVICES, INC. AND  
QWEST CORPORATION REQUEST FOR  
COMMISSION PROCESS TO ADDRESS KEY  
UNE ISSUES ARISING FROM TRIENNIAL  
REVIEW REMAND ORDER, INCLUDING  
APPROVAL OF QWEST WIRE CENTER  
LISTS.

DOCKET NO. T-03632A-06-0091  
T-03406A-06-0091  
T-03267A-06-0091  
T-03432A-06-0091  
T-04302A-06-0091  
T-01051B-06-0091

**NOTICE OF FILING OF SETTLEMENT  
AGREEMENT TESTIMONY**

Staff of the Arizona Corporation Commission ("Staff") hereby files the Settlement Agreement  
Testimony of Armando F. Fimbres of the Utilities Division, in the above-referenced matter.

RESPECTFULLY SUBMITTED this 7<sup>th</sup> day of September 2007.

  
Maureen A. Scott, Senior Staff Counsel  
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Original and thirteen (13) copies  
of the foregoing were filed this  
7<sup>th</sup> day of September 2007 with:

Docket Control  
Arizona Corporation Commission  
1200 West Washington Street  
Phoenix, Arizona 85007

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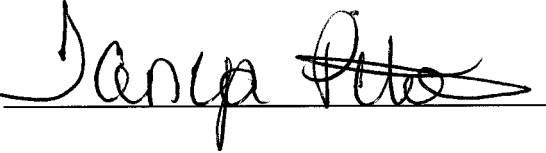
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**SETTLEMENT AGREEMENT**

**TESTIMONY**

**OF**

**ARMANDO FIMBRES**

**DOCKET NOS. T-03632A-06-0091**

**T-03267A-06-0091**

**T-04302A-06-0091**

**T-03406A-06-0091**

**T-03432A-06-0091**

**T-01051B-06-0091**

**IN THE MATTER OF THE APPLICATION OF DIECA  
COMMUNICATIONS DBA COVAD COMMUNICATIONS  
COMPANY, ESCHELON TELECOM OF ARIZONA, INC.,  
MCLEODUSA TELECOMMUNICATIONS SERVICES, INC.,  
MOUNTAIN TELECOMMUNICATIONS, INC., XO  
COMMUNICATIONS SERVICE, INC. AND QWEST  
CORPORATION REQUEST FOR COMMISSION  
PROCESS TO ADDRESS KEY UNE ISSUES ARISING  
FROM TRIENNIAL REVIEW REMAND ORDER,  
INCLUDING APPROVAL OF QWEST WIRE CENTER LISTS**

**SEPTEMBER 7, 2007**

**BEFORE THE ARIZONA CORPORATION COMMISSION**

MIKE GLEASON

Chairman

WILLIAM A. MUNDELL

Commissioner

JEFF HATCH-MILLER

Commissioner

KRISTIN K. MAYES

Commissioner

GARY PIERCE

Commissioner

|                                       |                              |
|---------------------------------------|------------------------------|
| IN THE MATTER OF THE APPLICATION OF ) | DOCKET NOS. T-03632A-06-0091 |
| DIECA COMMUNICATIONS DBA COVAD )      | T-03267A-06-0091             |
| COMMUNICATIONS COMPANY, )             | T-04302A-06-0091             |
| ESCHELON TELECOM OF ARIZONA, INC., )  | T-03406A-06-0091             |
| MCLEODUSA TELECOMMUNICATIONS )        | T-03432A-06-0091             |
| SERVICES, INC., MOUNTAIN )            | T-01051B-06-0091             |
| TELECOMMUNICATIONS, INC., XO )        |                              |
| COMMUNICATIONS SERVICE, INC. AND )    |                              |
| QWEST CORPORATION REQUEST FOR )       |                              |
| COMMISSION PROCESS TO ADDRESS KEY )   |                              |
| UNE ISSUES ARISING FROM TRIENNIAL )   |                              |
| REVIEW REMAND ORDER, INCLUDING )      |                              |
| APPROVAL OF QWEST WIRE CENTER )       |                              |
| LISTS )                               |                              |
| _____ )                               |                              |

SETTLEMENT AGREEMENT TESTIMONY

OF

ARMANDO FIMBRES

PUBLIC UTILITIES ANALYST V

UTILITIES DIVISION

ARIZONA CORPORATION COMMISSION

SEPTEMBER 7, 2007

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**EXECUTIVE SUMMARY**  
**DIECA COMMUNICATIONS dba**  
**COVAD COMMUNICATIONS COMPANY ET AL**  
**DOCKET NOS. T-03632A-06-0091 ET AL**

This testimony presents Staff's view of the Settlement Agreement ("Agreement") filed by the Joint Competitive Local Exchange Carriers ("Joint CLECs")<sup>1</sup> and Qwest (together "the Parties") on June 14, 2007 and provides the following comments and recommendations.

1. Staff was not a signatory to the Agreement.
2. Staff recommends utilization of 2004 ARMIS 43-08 data.
3. Staff believes the \$25 non-recurring conversion charge, in Section IV, is just and reasonable.
4. Staff sees the need for additional clarification regarding the methodology in Section V.B (Collocation). Staff recommends two changes:
  - a. The proposed Agreement does not provide any specific date or language for determining the affiliation of fiber-based collocators. The proposed Agreement language should be revised to include language that is specific and acceptable to all Parties, and
  - b. The amount of time allowed for the CLECs to respond to a letter from Qwest concerning the fiber-based collocation status of Carriers is "...no less than 10 business days..." Staff continues to believe that 60 days is an appropriate period.
5. Staff does not see a need for the Section VI.A.2 restriction which only allows Qwest to file a request for additional "non-impaired wire centers based in whole or part upon line counts at any time up to July 1 of each year.

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<sup>1</sup> Covad Communications Company, Mountain Telecommunications, Inc, Eschelon Telecom of Arizona, Inc., McLeodUSA Telecommunications Services, Inc. and XO Communications Services, Inc.

1     **1.     INTRODUCTION**

2     **Q.     Please state your name, occupation, and business address.**

3     A.     My name is Armando Fimbres. I am a Public Utilities Analyst V employed by the  
4             Arizona Corporation Commission ("ACC" or "Commission") in the Utilities Division  
5             ("Staff"). My business address is 1200 West Washington Street, Phoenix, Arizona 85007.

6  
7     **Q.     Have you previously filed testimony in this proceeding?**

8     A.     Yes. I filed Responsive Testimony on September 22, 2006 and Rebuttal Testimony on  
9             October 20, 2006, on behalf of Staff.

10  
11    **2.     BACKGROUND**

12    **Q.     What is the purpose of your testimony?**

13    A.     This testimony will present Staff's view of the Settlement Agreement ("Agreement") filed  
14             by the Joint Competitive Local Exchange Carriers ("Joint CLECs")<sup>2</sup> and Qwest (together  
15             "the Parties") on June 14, 2007.

16  
17    **Q.     Is every party in this docket a signatory to the Agreement?**

18    A.     No. Staff is not a signatory to the Agreement.

19  
20    **Q.     What specific areas will your testimony address?**

21    A.     Specifically, my testimony will address the Settlement Process and the Public Interest.

22  
23    **3.     SETTLEMENT PROCESS**

24    **Q.     Did Staff participate in the Settlement Process?**

25    A.     No.

---

<sup>2</sup> Covad Communications Company, Mountain Telecommunications, Inc, Eschelon Telecom of Arizona, Inc., McLeodUSA Telecommunications Services, Inc. and XO Communications Services, Inc.



1 **Q. Why was Staff not a participant in the Settlement Process?**

2 A. Settlement process negotiations are best served without Staff participation.

3

4 **4. OVERVIEW OF THE SETTLEMENT AGREEMENT**

5 **Q. Can you briefly provide an overview of the Agreement?**

6 A. Yes. Sections I and II are Introduction and Definitions areas, respectively. Staff does not  
7 have any comments on those sections. Sections III through VII are described below.

8

9 Section III: Initial Commission-Approved Wire Center List

10 Section IV: Non-Recurring Charge For Conversions Using The Initial Wire Center List  
11 And For Future Commission-Approved Additions To That List

12 Section V: Methodology

13 Section VI: Future Qwest Filings To Request Commission Approval Of Non-  
14 Impairment Designations And Additions To The Commission-Approved  
15 Wire Center List

16 Section VII: Other Provisions

17

18 **Q. In Staff's opinion, is the Agreement, as filed, in the Public interest?**

19 A. No. Staff believes that in order to consider the Agreement in the Public Interest, certain  
20 modifications or clarifications are needed. These recommended modifications or  
21 clarifications will be discussed in detail.

22

23 **5. SECTION III: INITIAL COMMISSION-APPROVED WIRE CENTER LIST**

24 **Q. Please describe Staff's understanding of this section?**

25 A. Section III identifies the initial set of Qwest Non-Impaired Wire Centers, in Attachment  
26 A<sup>3</sup> of the Agreement and provides the effective date corresponding to the initial set of  
27 Non-Impaired Wire Centers proposed for approval by the Commission.

28

---

<sup>3</sup> Attachment A provides the non-impairment designations for the initial set of proposed Wire Centers in Arizona, Colorado, Minnesota, Oregon, Utah and Washington.

1     **Q.     Is Section III acceptable to Staff as proposed?**

2     A.     No. In its Responsive and Rebuttal Testimonies, Staff recommended the use of 2004  
3           ARMIS 43-08 data. Staff requests that Section III make reference to the timing of the data  
4           used to determine the initial set of Non-Impaired Wire Centers.

5  
6     **Q.     Why is the specific ARMIS data used to determine the initial set of non-impaired**  
7           **Wire Centers relevant?**

8     A.     The vintage of ARMIS data was a major issue between Qwest and the Joint CLECs in  
9           earlier testimony. Rather than directly addressing a major issue in this proceeding, the  
10          Agreement goes directly to the selection of the initial set of Non-Impaired Wire Centers.  
11          In response to Staff's data requests, subsequent to the filing of the Agreement, Qwest and  
12          the Joint CLECs explained that 2004 ARMIS Data was the base information to which  
13          adjustments were made for the selection of the initial set on Non-Impaired Wire centers.  
14          Staff believes the 2004 ARMIS 43-08 data should be utilized. Staff recommends such  
15          modification to the agreement.

16  
17     **Q.     Does Staff agree with the selection of March 11, 2005 as the "Effective Date of the**  
18           **(initial) Non-Impairment Designations"?**

19     A.     Yes.

1     **6.     SECTION IV: NON-RECURRING CHARGE FOR CONVERSIONS USING THE**  
2     **INITIAL WIRE CENTER LIST AND FOR FUTURE COMMISSION-APPROVED**  
3     **ADDITIONS TO THAT LIST**

4     **Q.     Please describe Staff's understanding of this section?**

5     A.     Section IV sets forth the proposed terms and conditions that will apply to the conversion  
6     of UNEs to Qwest alternative services in Wire Centers that are designated as non-impaired  
7     by the Commission.

8  
9     **Q.     Does Staff have any concerns with Section IV, as proposed?**

10    A.     Yes. Staff notes that the Joint CLECs expressed great concern in earlier testimony about  
11    the amount of customer harm<sup>4</sup> that could result from a conversion process that in the view  
12    of the Joint CLECs was unnecessary. Staff finds nothing in the proposed Agreement that  
13    addresses the grave concerns expressed earlier related to the conversion process.

14  
15    The Joint CLECs' concerns may have been alleviated since Qwest has explained<sup>5</sup> that  
16    "...after processing more than 1400 conversions of UNEs to Qwest alternative services  
17    there have been no issues raised by CLECs regarding customer harm." However, Staff  
18    believes that the Public Interest requires clarification on customer impact to explain why  
19    customer impact is no longer a concern.

20  
21    **Q.     Does Staff agree with the \$25 non-recurring conversion charge?**

22    A.     Yes. Staff initial recommendation was zero but given that negotiation is a process of  
23    compromise since Qwest and the Joint CLECs have agreed to the proposed rate, Staff  
24    believes that the charge is just and reasonable.

25  

---

<sup>4</sup> July 28, 2006, Testimony of Doug Denney, page 65, lines 1 – 15.

<sup>5</sup> Qwest Response To STF 2.15, August 13, 2007.

1 **Q. Does Staff agree with the three-year term identified in Section IV.C?**

2 A. Yes.

3  
4 **7. SECTION V: METHODOLOGY**

5 **Q. Please describe Staff's understanding of this section?**

6 A. Section V outlines the proposed information or data analysis methodology that will be  
7 used to support future filings by Qwest when seeking additional Non-Impaired Wire  
8 Center designations.

9  
10 **Q. Does Staff have any concerns with Section V, as proposed?**

11 A. Yes. Staff believes that Section V.B. (Collocation) requires additional clarification. One  
12 requirement is to provide an inclusive date-range for determination of affiliated, fiber-  
13 based collocators. In earlier testimony<sup>6</sup>, Staff recommended that "Regardless of the data  
14 vintage, affiliated fiber-based collocators should not be counted separately if their legal  
15 affiliation exists at the date of a Commission Order designating a wire center as non-  
16 impaired. Understanding the affiliated status of companies is relatively easy and possible  
17 based on publicly available information. Given the importance of affiliated relationships,  
18 ignoring this information is not in the public interest." The Agreement language  
19 modifications should be acceptable to all Parties.

20  
21 A second concern is the amount of time allowed for the CLECs to respond to a letter from  
22 Qwest concerning the fiber-based collocation status of Carriers. Section V.B.4 states "The  
23 CLEC will have a reasonable opportunity (which Qwest will identify in its letter but  
24 which will be no less than ten (10) business days from the CLEC's confirmed receipt of  
25 Qwest's letter) to provide feedback to this information before Qwest files its request."

---

<sup>6</sup> October 20, 2007, Rebuttal Testimony of Armando Fimbres, page 13, lines 4 – 8.

1 Staff stated in earlier testimony<sup>7</sup> that "...two weeks is simply inadequate. Staff  
2 recommends that the CLECs have 60 days to respond rather than two weeks given the  
3 importance of the information to the non-impairment determination." Staff continues to  
4 believe that 60 days is an appropriate period.

5  
6 **Q. Does Staff have additional concerns in Section V.?**

7 A. No.

8  
9 **8. SECTION VI: FUTURE QWEST FILINGS TO REQUEST COMMISSION**  
10 **APPROVAL OF NON-IMPAIRMENT DESIGNATIONS AND ADDITIONS TO**  
11 **THE COMMISSION-APPROVED WIRE CENTER LIST**

12 **Q. Please describe Staff's understanding of this section?**

13 A. This section explains the processes for future filings by Qwest when seeking additional,  
14 Non-Impaired Wire Center designations.

15  
16 **Q. Does Staff have any concerns with Section VI, as proposed?**

17 A. Yes. Section VI.A.2 only allows Qwest to file a request for additional "non-impaired wire  
18 centers based in whole or part upon line counts at any time up to July 1 of each year,  
19 based on prior year line count data" thus restricting filings in the second-half of each year.  
20 Staff does not see a need for such a restriction on Qwest with the understanding that  
21 Qwest must provide appropriate data consistent with methodologies described in the final  
22 Agreement and approved by the Commission.

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<sup>7</sup> October 20, 2007, Rebuttal Testimony of Armando Fimbres, page 12, lines 1 - 3.

1 **Q. Does Staff have any concerns with Section VI.E.1 which addresses Fiber-Based**  
2 **Collocation information and related process steps?**

3 A. Yes. The timing of the affiliated, fiber-based collocater information, as described by Staff  
4 in its concerns in or about Section V.B, must also be properly addressed in this section.

5  
6 **9. SECTION VII: OTHER PROVISIONS**

7 **Q. Please describe Staff's understanding of this section?**

8 A. This section of the Agreement contains information pertaining to the impacts on  
9 Interconnection Agreements ("IAs") with specific CLECs resulting from the  
10 Commission's approval of the proposed Agreement.

11  
12 **Q. Does Staff have any concerns with Section VII, as proposed?**

13 A. Yes. The Joint CLECs' response to Staff's Data Request STF 1.2<sup>8</sup> offers the opinion that  
14 "There is no provision in the proposed Settlement Agreement stating that it binds all  
15 CLECs." This leaves open how the Commission will apply details in the Agreement to  
16 CLECs who are not a party to this Agreement.

17  
18 Staff recommends that the non-impairment assignments for wire centers in this docket  
19 apply to all carriers.

20  
21 **Q. Does Staff have a specific recommendation on how to proceed?**

22 A. Yes. Staff believes that the Commission should take the additional step of sending a  
23 notice to all CLECs with operating authority in Arizona and providing them an  
24 opportunity to (1) comment on the proposed Agreement and (2) submit any concerns that  
25 should be considered for a final Agreement. By taking this step, the Commission will be

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<sup>8</sup> Joint CLEC And Mountain Telecommunications Responses To Staff's First Set Of Data Requests, August 10, 2007.

1 ensuring that all CLECs with operating authority in Arizona are informed on this matter  
2 and that relevant findings are reflected in a Commission decision.  
3

4 **Q. Would Staff's recommendation mean a long delay in a decision pertaining to the**  
5 **proposed Agreement?**

6 A. No. Staff believes that providing notice to and receiving comments from all CLECs with  
7 operating authority in Arizona could be accomplished within approximately 60 days. This  
8 period would not impair the ability to the Joint CLECs and Qwest to ultimately comply  
9 with the terms and conditions of the proposed Agreement since the effective date of the  
10 initial set of Non-Impaired Wire Centers could remain March 11, 2005.  
11

12 **10. CONCLUSION**

13 **Q. Does this conclude your Testimony?**

14 A. Yes.